Douglas Cristo Primus Sikayun v The Government of the State of Sabah & Anor

HIGH COURT (KOTA KINABALU) — CASE NO BKI-21NCvC-19/10 OF 2019
LEONARD SHIM JC
21 APRIL 2020

Civil Procedure — Disposal of case on point of law — Plaintiff brought action against defendants for claim of statutory interest provided under Ordinance — Rules of Court 2012 O 14A — Sabah Land Acquisition Ordinance ss 14 & 23

This was an application filed by the plaintiff in encl 11 under O 14A of the Rules of Court 2012 ('the ROC 2012') for the issue of whether the plaintiff was entitled to the statutory interest provided for under the Land Acquisition Ordinance at the rate of 6%pa on the compensation sum of RM449,500 only from the date of acquisition 15 February 2018 till the date of full payment of the compensation sum ie 23 July 2019. The plaintiff was the registered owner of a parcel of land comprised and held under Native Title 213068789 situated at Kampung Lampasan in the district of Penampang, Sabah, Malaysia ('the said land') and by *gazette* Notification No 33 of 2018 published in the *Gazette* on 8 February 2018 and repeated on 15 February 2018, 0.573 acres of the said land had been compulsorily acquired by the first defendant under s 3 of the Land Acquisition Ordinance (Cap 69) ('the LAO'). Upon the second publication of the declaration in the *gazette* on 15 February 2018, 0.573 acres of the said land was vested in the first defendant and had been deemed surrendered to the same. The plaintiff had lost all rights and use of the said portion of the said land on the date of the second publication of the said declaration. By a letter of offer dated 8 January 2019, the first defendant through the second defendant made an offer to pay the plaintiff compensation in the sum of RM449,500 for the compulsory acquisition of 0.573 acres of the said land. On 25 June 2019, the plaintiff through his solicitors vide a letter dated 25 June 2019 requested for the payment of RM449,500 only as the agreed compensation sum to be paid failing which legal proceedings would be taken against the defendants. On 23 July 2019, the plaintiff received the compensation in the sum of RM499,500 only, which was about one year and seven months after the date of the second *gazette* notification. Learned counsel for the defendant submitted that as there was no dispute on the amount of compensation, the plaintiff's claim for statutory interest under s 23 of the LAO did not arise at all.

Held, allowing the plaintiff's application in encl 11:

(1) In the circumstances, the court found that the defendants were precluded from asserting that no compensation was awarded by the judge to defeat the plaintiff's claim for interest under s 23 of the LAO. To accede to such contention would be unconscionable and unjust as it would enable the defendants to take advantage of their own wrong. In the absence of a specific time frame in the Ordinance or the compromise agreement to pay the agreed compensation, the landowner who has been deprived of his property or land had a legitimate expectation under the compromise agreement and art 13 of the Federal Constitution that the second defendant would act fairly and pay the agreed compensation sum without unreasonable delay. The court agreed with the plaintiff's submission that under s 14(1) of the LAO, any question relating to compensation for compulsory land acquisition may be determined by the judge which includes the question of whether the plaintiff could claim interest for the delay in the payment of the agreed compensation sum. The defendant cannot be allowed to contract out of the fundamental constitutional safeguard to pay adequate compensation together with interest as provided under the Ordinance by entering into a settlement agreement and not referring the land reference to the court (see paras 12–13, 16 & 18).

[Bahasa Malaysia summary

Ini merupakan permohonan yang difailkan oleh plaintif dalam kandungan 11 dibawah A 14A Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') atas isu sama ada plaintif berhak kepada faedah statutori yang diperuntukan dibawah Ordinan Pengambilan Tanah pada kadar 6%pa atas jumlah pampasan RM449,500 dari tarikh pengambilan 15 Februari 2018 sehingga tarikh pembayar penuh jumlah pampasan iaitu 23 Julai 2019. Plaintif merupakan pemilik berdaftar satu bidang tanah yang dipegang dibawah hakmilik adat 213068789 yang terletak di Kampung Lampasan dalam daerah Penampang, Sabah, Malaysia ('tanah tersebut') dan melalui pemakluman di dalam pewartaan no 33 Tahun 2018 yang diterbit dalam pewartaan pada 8 Februari 2018 dan diulangi pada 15 Februari 2018, 0.573 ekar tanah tersebut telah diperoleh semula secara wajib oleh defendan pertama dibawah s 3 Land Acquisition Ordinance (Cap 69) ('LAO'). Atas penerbitan kedua dan perisytiharan dalam pewartaan pada 15 Februari 2018, 0.573 ekar tanah tersebut diletak hak pada defendan pertama dan dikira sebagai diserahkan kepada yang sama. Plaintif telah kehilangan semua hak dan kegunaan pada bahagian tanah tersebut pada tarikh penerbitan kedua perisytiharan tersebut. Melalui satu surat tawaran bertarikh 8 Januari 2019, defendan pertama melalui defendan kedua telah membuat tawaran untuk membayar kepada plaintif pampasan dalam jumlah RM449,500 sebagai pampasan yang dipersetujui untuk dibayar yang mana sekiranya gagal, prosiding undang-undang akan diambil terhadap defendan-defendan. Pada 23 Julai 2019, plaintif telah menerima pampasan jumlah RM499,500, hampir satu tahun dan tujuh bulan

A selepas tarikh pemakluman kedua dalam pewartaan. Peguam terpelajar untuk defendan menghujahkan bahawa tiada pertelingkahan atas jumlah pampasan, tuntutan plaintif untuk faedah statutori dibawah s 23 LAO tidak berbangkit langsung.

B **Diputuskan**, membenarkan permohonan plaintif dalam kandungan 11:

(1) Dalam keadaan ini, mahkamah mendapati bahawa defendan terhalang daripada menegaskan tiada pampasan dianugerahkan oleh hakim untuk menewaskan tuntutan plaintif atas faedah dibawah s 23 LAO. Untuk
C menerima perbalahan sedemikian adalah tidak wajar dan tidak adil kerana ianya akan membenarkan defendan untuk mengambil keuntungan atas perlakuan salah mereka. Dalam ketiadaan tempoh masa spesifik dalam ordinan atau perjanjian kompromi untuk membayar pampasan yang dipersetujui, pemilik tanah, yang telah kehilangan
D hartanya atau tanah mempunyai satu jangkaan yang sah dibawah perjanjian kompromi dan perkara 13 Perlembagaan Persekutuan bahawa defendan kedua akan bertindak secara adil dan membayar jumlah pampasan tanpa sebarang penangguhan munasabah. Mahkamah bersetuju dengan hujahan plaintif bahawa dibawah s 14(1) LAO, apa-apa
E persoalan berkaitan dengan pampasan untuk pengambilan wajib tanah boleh ditentukan oleh hakim, termasuklah persoalan sama ada plaintif boleh menuntut faedah untuk penangguhan dalam pembayaran jumlah pampasan yang dipersetujui. Defendan tidak boleh dibenarkan memasuki kontrak untuk keluar daripada perlindungan asas
F perlembagaan untuk membayar pampasan yang memadai berserta dengan ganti rugi yang diperuntukan dibawah ordinan dengan memasuki satu perjanjian penyelesaian dan tidak merujuk rujukan tanah tersebut keapda mahkamah (lihat perenggan 12–13, 16 & 18)]

G **Cases referred to**

Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 MLJ 309; [2008] 4 CLJ 538, CA (refd)

Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor [2013] 2 MLJ 16; [2013] 3 CLJ 649, CA (refd)

H *Happy Estate Sdn Bhd v The Government of the State of Sabah & Anor* [2010] 1 LNS 405, HC (refd)

Happy Estate Sdn Bhd v The Government of the State of Sabah & Anor (2013) 5 BLR (refd)

IOI Edible Oils Sdn Bhd v Sabah Ports Sdn Bhd & Sabah Ports Authority [2009]
I MLJU 302; [2009] 1 LNS 329, HC (refd)

JW Properties Sdn Bhd v Perbadanan Kemajuan Pertanian Selangor & Anor and another appeal [2016] 1 MLJ 341; [2016] 1 CLJ 13, CA (refd)

Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals [2014] 6 MLJ 31; [2014] 7 CLJ 597, FC (refd)

Oxbridge Height Sdn Bhd v Azizan Mohammad Ali & Anor [2014] 7 CLJ 135, HC (refd)
Perantara Properties Sdn Bhd v JMC-Kelana Square and another appeal [2016] MLJU 1598; [2016] 5 CLJ 367, HC (refd)
Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526, FC (refd)

Legislation referred to

Federal Constitution arts 13, (2)
Land Acquisition Ordinance (Cap 69) ss 2, 3, 14, 14(1), 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
Rules of Court 2012 O 14A

(Lee & Thong) for the plaintiff.
(Sabah State Attorney General's Chambers) for the defendants.

Leonard Shim JC:

[1] This is an application filed by the plaintiff (encl 11) under O 14A of the ROC 2012 for the following question of law to be determined by this court.

Whether the plaintiff is entitled to the statutory interest provided for under the Land Acquisition Ordinance at the rate of 6%pa on the compensation sum of RM449,500 only from the date of acquisition ie 15 February 2018 till the date of full payment of the compensation sum ie 23 July 2019.

[2] This application is supported by the affidavit in support affirmed by Douglas Cristo Primus Sikayun on 30 December 2019 (encl 12).

[3] During the hearing of encl 11 on 3 February 2020, the learned counsel for the defendants informed the court that the defendants have no objection to encl 11 and the evidence in the affidavit in support. The defendants agreed to submit on the point of law.

[4] After perusing the pleadings, question of law to be determined and the undisputed facts in encls 11 and 12 and applying the established principles on O 14A in the decision of the Federal Court in *Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals* [2014] 6 MLJ 31; [2014] 7 CLJ 597, I am satisfied that the sole question of law in encl 11 as agreed by both parties is suitable for determination under O 14A and the court will hear and consider the submissions on the point in issue.

[5] The undisputed facts:

(a) that the plaintiff is the registered owner of a parcel of land comprised and held under native title 213068789 situated at Kampung Lampasan in the district of Penampang, Sabah, Malaysia ('the said land');

(b) that by a *Gazette* Notification No 33 of 2018 published in the *gazette* on 8 February 2018 and repeated on 15 February 2018, 0.573 acres of the said land had been compulsorily acquired by the first defendants;

(c) that the 0.573 acres of the said land was compulsorily acquired under s 3 of the Land Acquisition Ordinance (Cap 69) (hereinafter referred to as LAO) for the 'Project Lebuhraya Pan Borneo Sabah (Pakej WP6) Kota Kinabalu Outer Ring Road (KKORR), Daerah Penampang';

(d) that upon the second publication of the declaration in the *gazette* on 15 February 2018, 0.573 acres of the said land was vested in the first defendants and had been deemed surrendered to the same. The plaintiff had lost all rights and use of the said portion of the said land on the date of the second publication of the said declaration;

(e) that by a letter of offer dated 8 January 2019, the first defendant through the second defendant made an offer to pay the plaintiff compensation in the sum of RM449,500 only for the compulsory acquisition of 0.573 acres of the said land. There was no mention that should the plaintiff accept the offer that the plaintiff has to forgo all interests payable since 15 February 2018;

(f) that in reliance of the contents of the said letter dated 8 January 2019, the registered valuers engaged by the plaintiff accepted the offer and submitted the relevant documents to the second defendant as requested;

(g) that through his solicitors Messrs Lee & Thong vide a letter dated 25 June 2019, the plaintiff had requested for the payment of RM449,500 only as the agreed compensation sum to be paid failing which legal proceedings would be taken against the defendants; and

(h) that on 23 July 2019, the plaintiff received the compensation in the sum of RM449,500 only ('compensation sum'), which was about one year and seven months after the date of the second *gazette* notification.

[6] Submissions of the parties:

In their written submission, the learned counsel for the defendants submitted that the court may award interest pursuant to s 23 only when the judge decides on the question and claims relating to the payment of compensation under the LAO. This is very clearly stated in that section.

The procedure of the inquiry to determine the questions and claims relating to

payment of compensation under the LAO is provided under ss 14 to 24 of the LAO.

In the current case, the plaintiff had accepted and received the compensation sum from the first defendant on 23 July 2019. Therefore, there was no dispute on the amount of compensation by the plaintiff that necessitates the plaintiff to invoke the provisions under the LAO.

It is submitted by the defendants that as there was no dispute on the amount of compensation, the plaintiff's claim for statutory interest under s 23 of the LAO does not arise at all.

The statutory interest provided under s 23 is part and parcel of the procedure in awarding compensation under the LAO. Therefore, it is humbly submitted that s 23 cannot be invoked separately under the LAO. In other words, the application of s 23 must be read together with other provisions under the LAO.

As an example, the case of *Happy Estate Sdn Bhd v The Government of the State of Sabah & Anor* (2013) 5 BLR illustrates the inquiry of the assessment and determination of the amount of compensation and the award of interest pursuant to the LAO.

In the light of the aforesaid, it is submitted by the learned counsel for the defendants that the plaintiff is not entitled to the statutory interest as provided under s 23 of LAO since the plaintiff's case does not fall within the ambit of the LAO.

[7] In reply, the plaintiff's counsel submitted that:

Section 14 of the Land Acquisition Ordinance provides:

> DETERMINATION OF CLAIMS TO COMPENSATION
>
> *Determination of questions by Judge.*
>
> 14(1) *All questions and claims relating to the payment of compensation* under this Ordinance and to the apportionment of such compensation *shall*, save as is hereinafter provided, be submitted to a Judge.

The definition of 'judge' as found in the Interpretation under s 2 of the Land Acquisition Ordinance 'means a judge of the High Court sitting in chambers'.

It is clear from the above, the correct forum for the determination of all questions and claims relating to the payment of compensation under the Land

A Acquisition Ordinance is before the High Court. The relevant law to consider in determining all questions and claims relating to the payment of compensation is the Land Acquisition Ordinance.

B Interest payable on the compensation sum under the Land Acquisition Ordinance is found under s 23 of the Land Acquisition Ordinance.

C To address the defendants' submission — the defendants' main contention is that the court may only add the 6% interest provided for under s 23 of the Land Acquisition Ordinance 'in awarding compensation' as opposed to one where full payment of the compensation sum has been received, the plaintiff submitted that if interest under the Land Acquisition Ordinance is not allowed on the reasoning that the compensation sum has been paid, what then becomes of a landowner's right to his land from the time the said right is lost and D surrendered till the time he is compensated? This reasoning suggests the time between the land being surrendered till the time compensation is paid will go unaccounted.

E Both the plaintiff and the defendants referred to the same High Court decision of *Happy Estate Sdn Bhd v The Government of the State of Sabah & Anor* [2010] 1 LNS 405. It must be noted that in the *Happy Estate* case, the 6% interest was calculated from the date of the second publication of declaration in the *gazette* until the date of payment.

F lf interest is only payable in situations where compensation had yet to be determined by the court, that would suggest there is no urgency for the defendants to issue payment for the compensation of any compulsorily acquired land after the second publication of declaration in the *gazette*. The G defendants may take their time to issue said payment depriving a landowner of his land or money.

It was submitted that the plaintiff should not, at any point, be deprived of any benefit derived from the land the moment the right to the land was H surrendered.

[8] In their submission in reply, the defendants submitted that s 23 of the LAO may only be brought to light in cases where the amount of compensation is still in dispute and the amount payable has yet to be made. Section 23 of the I LAO does not deal with interest payable solely. This means that, it has to be read alongside other provisions within the ordinance.

Hence, the question of whether the plaintiff is entitled to the rate of 6%pa on the compensation sum should not be made with reference to s 23 of the LAO.

It is also further submitted that the fact that the compensation sum has been paid in full, the LAO should cease to apply upon receipt of the compensation sum.

As with regards to the case of *Happy Estate Sdn Bhd v The Government of the State of Sabah and Anor* (2013) 5 BLR, the case merely illustrate the process of determination of compensation, which ultimately lead to the award of interest pursuant to the LAO. The plaintiff's case is completely different in the sense that the compensation sum has already been made in full and that there is no need for any determination of interest via s 23 of the LAO.

In the premises, the defendants submitted that the question of law hereinabove be answered in the negative and the plaintiff's claim should be dismissed with costs.

COURT FINDINGS AND DECISION

[9] First and foremost, art 13(2) of the Federal Constitution, provides land owners with a constitutional safeguard to receive adequate compensation upon acquisition. In *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526, the Federal Court held that:

> [197] Article 13(2) is a constitutional safeguard to land owners to receive 'adequate compensation' upon acquisition. Even as the Act authorises the State to acquire land from landowners, the law provides that the person deprived of his property must be adequately compensated.
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> [198] But what is adequate compensation for a person who has been deprived of his or her property? The term 'adequate compensation' is not defined in the Act. In *Pentadbir Tanah Daerah Gombak v Huat Heng (Lim Low & Sons) Sdn Bhd* [1991] 1 CLJ 16; [1991] 1 CLJ Rep 356; [1990] 3 MLJ 282, the Supreme Court held that 'the basic principle governing compensation is that the sum awarded should, as far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired'. (see *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath).
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> [199] The above principle is known as the principle of equivalence. By this principle, the affected landowners and occupants are entitled to be compensated fairly for their loss. But they should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.

[10] Section 23 of the LAO expressly empowers the court to award interest when awarding compensation for land acquisition. The LAO is a statute enacted to protect the rights of landowners by providing for adequate

compensation to be paid to the landowner including an award of interest for the loss resulting from the compulsory acquisition of their land.

[11] In the present case, there was no land reference or inquiry conducted by the judge under s 16 of the LAO. Consequently, no award for compensation was made under s 19 of the LAO to the plaintiff. The reason for not referring the plaintiff's claim to the court was because the second defendant had on 8 January 2019 offered a sum of RM449,500 as compensation for the compulsory acquisition of the plaintiff land and the offer was promptly accepted by the plaintiff. Hence, a compromise or settlement agreement was concluded to which the parties are bound. After an unexplained delay of over one and a half years in the payment of the agreed compensation, the plaintiff through his advocates, Messrs Lee & Thong wrote to the defendants to demand for payment of the agreed compensation sum failing which the plaintiff will commence legal action in court to recover the compensation or debt owing to the plaintiff. The agreed compensation sum was only received by the plaintiff on 23 July 2019. Despite having sufficient opportunity in this action to explain the long delay in paying the agreed compensation sum, the defendants failed to do so. Neither did the second defendant deposited the said monies in the court prior to 23 July 2019 or at any time.

[12] In the circumstances, it is my finding that the defendants are precluded from asserting that no compensation was awarded by the judge to defeat the plaintiff's claim for interest under s 23 of the LAO. To accede to such contention would be unconscionable and unjust as it would enable the defendants to take advantage of their own wrong. See *JW Properties Sdn Bhd v Perbadanan Kemajuan Pertanian Selangor & Anor and another appeal* [2016] 1 MLJ 341; [2016] 1 CLJ 13.

[13] In the absence of a specific time frame in the LAO or the compromise agreement to pay the agreed compensation this court takes the view that the landowner who has been deprived of his property or land has a legitimate expectation under the compromise agreement and art 13 of the Federal Constitution that the second defendant will act fairly and pay the agreed compensation sum without unreasonable delay. This was so because the plaintiff had lost all rights and use of the said portion of the said land on the date of the second publication of the *gazette* notification on 15 February 2018. The first defendant's letter of offer for compensation was only made on 8 January 2019 which was duly accepted by the plaintiff. There was no mention in the said offer letter that should the plaintiff accepts the offer, the plaintiff would have to forego all interests payable since 15 February 2018. In consideration of the defendants' offer, the plaintiff had acted to his detriment by not referring his claim for any or any higher compensation to the court. See *Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors*

[2008] 4 MLJ 309; [2008] 4 CLJ 538, wherein the Court of Appeal held:

> [50] The principle of legitimate expectation was first perceived by Lord Denning MR in *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149, CA to denote something less than a right which may nevertheless be protected by the principles of natural justice. Put in another way, a legitimate expectation amounts to an expectation of receiving some benefit or privilege to which the individual has no right. It has been used by the courts on numerous occasions and in different contexts with the result that 'there are many semantic confusions which have bedevilled this area of our law' (per Simon Brown LJ, in *R v Devon County Council, ex p Baker* [1995] 1 All ER 73, CA). In the words of Taylor J, in *R v Secretary of State for the Home Department, ex p Ruddock* [1987] 2 All ER 518, 'the doctrine of legitimate expectation in essence imposes a duty to act fairly.' The duty to act fairly applies in the context of legitimate procedural expectations as demonstrated by the case of *R v Liverpool Corpn, ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, CA. In *R v Secretary of State for the Home Department, ex p Ruddock*, the substantive benefit was that individuals not falling within the government's published criteria for telephone tapping would not have their telephone calls intercepted by the security services.
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> [51] I venture to say that even where no promise of a benefit has been made and there is no established practice of granting that benefit, the person concerned is, elementarily, entitled to be treated fairly. Thus, stall holders in a market are entitled to be consulted before charges are increased (*R v Birmingham CC ex p Dredger* [1993] COD 340). But residents in an old people's home to whom no promise of consultation has been made need not be consulted before the local authority closes the home (*R v Devon County Council ex p Baker* at p 89 adopting the approach of AG for *New South Wales v Quin* [1990] 93 ALR 1 at 39).
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> [52] Whether an expectation exists, is clearly a question of fact. So, if a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect. Here, the appellants expected the respondents to keep to their promises and so the appellants expect that the doctrine of legitimate expectation to protect them and the said doctrine can be invoked to protect them.

[14] In *Perantara Properties Sdn Bhd v JMC — Kelana Square and another appeal* [2016] MLJU 1598; [2016] 5 CLJ 367 the Court of Appeal held:

> (2) In construing provisions of a statute, regard must be given to the Federal Constitution ('constitution'). The relevant presumption is that the Parliament does not intend to invade the rights accorded in the Constitution.

[15] In *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 2 MLJ 16; [2013] 3 CLJ 649, the Court of Appeal held:

> (a) the Act is a legislation that empowers a state authority to deprive a person of his property. As such, the provisions of the Act must be strictly interpreted in favour of the person who is to be deprived of his property so as to give meaning to the constitutional protection of a person's right to his property; and

(b) the Act was meant to safeguard the constitutional right to property under Art 13 of the Constitution, as it prescribes the procedure to be followed by the state authority for the acquiring of a person's land, including the determination of the amount of fair and reasonable compensation to be paid.

[16] Applying a purposive interpretation of the LAO, and the established principles of statutory interpretation in the aforesaid cases, this court agree with the plaintiff's submission that under s 14(1) of the LAO, any question relating to compensation for compulsory land acquisition may be determined by the judge and this includes the question of whether the plaintiff could claim interest for the delay in the payment of the agreed compensation sum.

[17] In the present case, the defendants have kept the plaintiff out of the agreed compensation money which ought to have been paid to the plaintiff without unreasonable delay. As the defendants have use of the money, they ought to compensate the plaintiff accordingly with interest. See *IOI Edible Oils Sdn Bhd v Sabah Ports Sdn Bhd & Sabah Ports Authority* [2009] MLJU 302; [2009] 1 LNS 329.

[18] The defendants cannot be allowed to contract out of the fundamental constitutional safeguard to pay adequate compensation together with interest as provided under the LAO by entering into a settlement agreement and not referring the land reference to the court. See *Oxbridge Height Sdn Bhd v Azizan Mohammad Ali & Anor* [2014] 7 CLJ 135, wherein the High Court held:

> (2) HDA is a *specific legislation enacted by the Legislature to protect the rights and interests of housebuyers* in their dealings with developers. It must therefore take precedence over s 10 of the CA. As the SA did not comply with reg 11(1) of the HDR, it was null and void and was thus, unenforceable. Both parties were bound by the terms of the SPA without any modification or waiver as recognised under the law. *To permit the SA to take effect over the statutory SPA would be to allow the parties to contract out of statute which would render it unlawful and invalid*. The right of the respondents to claim for LAD under the SPA, therefore, remained intact and was not taken away by the SA.

[19] Hence, this court finds that an award of interest on the compensation sum would be fair and adequate compensation for the plaintiff's loss of all rights and use of the said portion of the said land from 15 February 2018 until the plaintiff received the compensation sum on 23 July 2019.

[20] Applying the established principles of law and equity to the facts of the present case and having read and considered the notice of application (encl 11), affidavit and written submissions filed by the parties, this court would answer question one of encl 11 in the affirmative. Consequently, the plaintiff's claim in

prayer (1) of the statement of claim (encl 2) is allowed and judgment is entered accordingly against the defendants with costs in the total sum of RM8,000 to be paid by the defendants to the plaintiff subject to payment of allocatur fee.

[21] This order shall take effect on the day after the date of expiry of the extended movement control order.

Application allowed with costs of RM8,000.

Reported by Mohd Kamarul Anwar